

GORDON & SILVER, LTD.  
 GERALD M. GORDON, ESQ.  
 Nevada Bar No. 229  
 E-mail: gmg@gordonsilver.com  
 GREGORY E. GARMAN, ESQ.  
 Nevada Bar No. 6654  
 E-mail: geg@gordonsilver.com  
 3960 Howard Hughes Pkwy., 9th Floor  
 Las Vegas, Nevada 89109  
 Telephone (702) 796-5555  
 Facsimile (702) 369-2666  
 [Proposed] Counsel to the Official Committee  
 of Holders of Executory Contract Rights Through  
 USA Commercial Mortgage Company

E-Filed On May 26, 2006

**UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

Case Nos.:  
 BK-S-06-10725-LBR  
 BK-S-06-10726-LBR  
 BK-S-06-10727-LBR  
 BK-S-06-10728-LBR  
 BK-S-06-10729-LBR

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
 Debtor.

JOINTLY ADMINISTERED  
 Chapter 11

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

In re:  
 USA SECURITIES, LLC,  
 Debtor.

OST REQUESTED  
 Date: June 5, 2006  
 Time: 9:30 a.m.

Affects:  
☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

**APPLICATION OF THE OFFICIAL COMMITTEE OF HOLDERS OF EXECUTORY  
 CONTRACT RIGHTS THROUGH USA COMMERCIAL MORTGAGE COMPANY TO  
 EMPLOY GORDON & SILVER, LTD.**

**TO: THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

1 The Official Committee of Holders of Executory Contract Rights through USA  
2 Commercial Mortgage Company (the "Committee") respectfully requests that this Court  
3 approve, as of May 26, 2006, the employment of Gordon & Silver, Ltd. ("G&S") as counsel to  
4 the Committee.

5 This application ("Application") is made and based upon Sections 327 and 328, Title 11,  
6 of the United States Code (the "Bankruptcy Code") and Federal Rules of Bankruptcy Procedure  
7 2014, the papers and pleadings contained in the Court's file, judicial notice of which is  
8 respectfully requested, and the Declaration of Gregory E. Garman, Esq. ("Garman Declaration")  
9 filed contemporaneously herewith, and any argument of counsel to be entertained at any hearing  
10 on this Application.

# 11 **I.** 12 **BACKGROUND**

13 1. On April 13, 2005 (the "Petition Date"), USA Commercial Mortgage Company  
14 ("USA Mortgage"), USA Securities, LLC ("USA Securities"), USA Capital Realty Advisors,  
15 LLC ("USA Realty"), USA Capital Diversified Trust Deed Fund, LLC ("USA Diversified"), and  
16 USA Capital First Trust Deed Fund, LLC ("USA First" and, collectively with USA Mortgage,  
17 USA Securities, USA Realty, and USA Diversified, the "Debtors") filed voluntary petitions for  
18 relief under Chapter 11, Title 11 of the United States Code.

19 2. On May 10, 2006, the Office of the United States Trustee (the "US Trustee")  
20 appointed the following four committees in these Chapter 11 cases:

- 21 1. The Official Committee of Holders of Executory Contract Rights Through  
22 USA Commercial Mortgage Company;
- 23 2. The Official Unsecured Creditors Committee for USA Commercial  
24 Mortgage Company;
- 25 3. The Official Committee of Equity Security Holders of USA Capital  
26 Diversified Trust Deed Fund, LLC; and
- 27 4. The Official Committee of Equity Security Holders of USA Capital First  
28 Trust Deed Fund, LLC.

The Committee initially sought to retain the law firm of Stutman, Treister and Glatt  
collectively with one or both of the fund committees. However, after deliberating the issue at

1 their first full meeting on May 23, 2006, the Committee has determined that joint representation  
2 is not in its best interest. As such, the Committee desires to employ Gordon & Silver, Ltd. as its  
3 counsel. Subject to Court approval, the Committee has entered into a Legal Representation  
4 Agreement with G&S, a copy of which is attached to the Garman Declaration as Exhibit "1."

5  
6 **II.**  
**JURISDICTION**

7 5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and  
8 1134. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The statutory basis for  
9 the relief sought herein is Sections 328, 1107 and 1108 of the Bankruptcy Code and Fed. R.  
10 Bankr. P. 2014. Venue of Debtor's Chapter 11 case in this District is proper pursuant to 28  
11 U.S.C. §§ 1408 and 1409.

12 **III.**  
**THE FIRM**

13  
14 6. The attorneys employed by G&S are duly admitted to practice before this Court.

15 7. Members of G&S have practices emphasizing insolvency and reorganization  
16 matters and have been actively involved in many of the largest bankruptcy cases filed in this  
17 District. G&S has represented debtors, various committees and other parties-in-interest in cases  
18 of national significance, and is well qualified to act as attorneys for the Committee. The  
19 Committee has selected G&S for the following reasons:

20 a. G&S is familiar with the bankruptcy practice and these bankruptcy  
21 proceedings, and is well qualified to act as attorneys for the Committee; and

22 b. It is necessary for the Committee to employ attorneys to render the  
23 following professional services:

24 (i) To advise the Committee of its rights and obligations and  
25 performance of its duties during administration of these bankruptcy cases;

26 (ii) To represent the Committee in all proceedings before this Court or  
27 other courts of jurisdiction over these cases;

28 (iii) To assist the Committee in the performance of its duties as set

1           forth in 11 U.S.C. § 1103;

2                   (iv) To assist the Committee in developing legal positions and  
3 strategies with respect to all facets of these proceedings; and

4                   (v) To provide such other counsel and advice as the Committee may  
5 require in connection with the above-captioned proceeding.

6           8. To the best of Debtor's knowledge, G&S is disinterested within the meaning of  
7 Section 101(14) of the of the Bankruptcy Code in that G&S, its shareholders, counsel and  
8 associates:

9                   a. are not creditors or insiders of Debtor;

10                   b. are not and were not, within two years before the date of this application, a  
11 director, officer, or employee of Debtor as specified in subparagraph (c) of 11 U.S.C. §  
12 101(14);

13                   c. do not hold an interest materially adverse to the interest of the estate or of  
14 any class of creditors or equity holders except as stated herein.

15           9. G&S has an existing relationship with Nevada State Bank. With regard to these  
16 bankruptcy proceedings, Nevada State Bank holds an unsecured credit line outstanding to USA  
17 Capital Mortgage which is guaranteed by, among others, Thomas Hantges, a former principle of  
18 one or more of the Debtors. Additionally, Nevada State Bank has a depository relationship with  
19 one or more of the Debtors. Finally, Nevada State Bank has a note secured by a Deed of Trust  
20 on an office building owned by Hapinov, LLC, a Nevada limited liability company, which is  
21 currently occupied by one or more of the debtors under a lease agreement.

22           10. G&S has an existing relationship with Janet Buckalew, Trustee of the Buckalew  
23 Trust in both unrelated matters and the above-captioned debtors. With specific regard to the  
24 USA Capital cases, Buckalew, as Trustee, is a Direct Lender and holds equity security interests  
25 in one or more of the funds. Counsel has appeared at the initial hearing in these proceedings on  
26 behalf of Buckalew, as Trustee, and on behalf of Kevin Higgins, another Direct Lender and  
27 brother of one of G&S' shareholders. Prior to the appointment of the Committee, G&S was in  
28 the process of forming an Ad Hoc Committee of Holders of Direct Lenders. G&S terminated its

1 efforts to form an Ad Hoc Committee upon the appointment of the Official Committee and did  
 2 not at any point accept representation of the Ad Hoc Committee or its members. If appointed as  
 3 Committee counsel, G&S will not represent any individual Direct Lenders in these proceedings.

4 11. William M. Noall, Esq., a shareholder with G&S, currently acts as Chapter 11  
 5 Trustee in the bankruptcy proceeding of Mega-C Power Corporation, case no. BK-N-04-50962-  
 6 GWZ, pending in the United States Bankruptcy Court for the District of Nevada. In his capacity  
 7 as Chapter 11 trustee, Mr. Noall has retained Jeffrey R. Truitt of Mesirow Financial Consulting,  
 8 LLC, as his financial advisor.

9 12. G&S also acts as general counsel to Celerity Group, Inc., Kinetics Group, Inc.,  
 10 Kinetics Chempure Systems, Inc., and FTS Systems, Inc., of which Jeffrey R. Truitt of Mesirow  
 11 Financial Consulting, LLC is chief executive officer.

12 13. G&S does not have any connection with the United States Trustee or any persons  
 13 employed in the Office of the United States Trustee.

#### 14 **IV.** 15 **COMPENSATION**

16 14. Subject to Court approval, in accordance with 11 U.S.C. § 330, the Committee  
 17 seeks to retain G&S on an hourly basis at the customary and standard rates that G&S charges for  
 18 similar representation, plus reimbursement of actual and necessary expenses incurred by G&S in  
 19 performing its duties.

20 15. The Committee proposes the compensation of said attorneys and  
 21 paraprofessionals be at varying rates currently ranging from \$150 per hour for paraprofessionals,  
 22 from \$175 per hour to \$380 per hour for the services of associates, and from \$410 per hour to  
 23 \$525 per hour for the services of shareholders of G&S, subject to change from time to time as  
 24 provided for in the retainer agreement, Exhibit "1" to the Garman Declaration, and all subject to  
 25 application to, and approval by, this Court pursuant to Sections 330 and 331 of the Bankruptcy  
 26 Code.

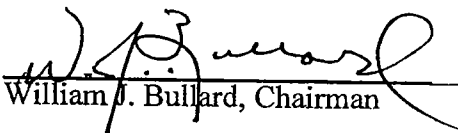
27 16. G&S reserves the right to seek compensation for services rendered on behalf of  
 28 the Ad Hoc Committee to the extent that the Court determines such services to have benefited

Direct Lenders or that such service is constituted a substantial contribution to the bankruptcy cases. It is further contemplated that G&S may seek interim compensation during this case as permitted by 11 U.S.C. § 331 and Federal Bankruptcy Procedure 2016. G&S understands that its compensation is subject to prior Court approval.

WHEREFORE, Debtor respectfully requests that it be authorized to employ G&S as its attorneys (as of May 23, 2006), to render legal services as described above, with compensation and with reimbursement of expenses to be paid as an administrative expense in such amounts as may be allowed by the Court, pursuant to the provisions of Section 330 of the Bankruptcy Code.


DATED this 26 day of May, 2006.

THE OFFICIAL COMMITTEE OF HOLDERS OF  
EXECUTORY CONTRACT RIGHTS THROUGH  
USA COMMERCIAL MORTGAGE COMPANY

  
William J. Bullard, Chairman

GORDON & SILVER, LTD.

By:

  
GERALD M. GORDON, ESQ.  
GREGORY E. GARMAN, ESQ.  
3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89109